

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
RENTON, WASHINGTON 98057-3356

In the matter of the petition of

**AerSale, Incorporated**

for exemption from §§ 25.561 and 25.853 of  
Title 14, Code of Federal Regulations

**Regulatory Docket No. FAA-2010-1134**

**PARTIAL GRANT OF EXEMPTION**

By letters dated November 4, 2010, and January 24, 2011, Mr. Iso Nezaj, Vice President, Technical Services, AerSale, Inc., 121 Alhambra Plaza Suite 1110, Coral Gables, Florida, 33134, petitioned for exemption from Title 14, Code of Federal Regulations (14 CFR) 25.561 and 25.853. The proposed exemption, if granted, would permit relief from specific certification requirements to enable installation of passenger seats, which are subject to a pending airworthiness directive (AD), on Boeing model 747-400 airplanes.

**The petitioner requests relief from the following regulations:**

**Section 25.561** requires that items of mass, including seats satisfy certain strength requirements in the event of an emergency landing

**Section 25.853** requires that components used in interior compartments satisfy certain flammability requirements.

**The petitioner supports its request with the following information:**

This section quotes the relevant information from the petitioner's request. Complete petition information is available at the Department of Transportation's Federal Docket Management System, on the Internet, at <http://www.regulations.gov>, in docket no. FAA-2010-1134.

In light of the Notice of Proposed Rulemaking (NPRM) published on September 24, 2010 in the Federal Register and the unknown conditions regarding the safety of the seats manufactured by Koito Industries, Ltd., AerSale, Inc. ("AerSale") hereby

petitions the FAA to request a limited exemption from 14 CFR Part 25 (specifically, Part 25, the certification process requirements, only as related to the §25.561, §25.853 and Appendix F of Part 25) of the Federal Aviation Regulations in the manner described below.

AerSale is the current owner of multiple Ex-JAL B747-400 series aircraft installed with the affected Koito seats which are the subject of NPRM 2010-NM-156-AD. We are attempting to obtain approval to re-configure one of our B747-400 series aircraft from its current 12 First Class/77 Business Class/237 Economy Class configuration to a 22 Business Class/446 Economy Class configuration with Designated Engineering Representative (“DER”) approval, using affected seats we obtained from another B747-400 aircraft we own. As you are aware, this change in LOPA [Lay Out Passenger Accommodations] requires the approval of the FAA or its designee. Our DER has been advised by the FAA that he is not authorized to approve any configurations involving the Koito seats because of the unknown safety condition of the seats. Such installation, which could be considered a “new installation approval,” would also be prohibited until the compliance period for the proposed Airworthiness Directive (“AD”) took effect.

Limited Exemption:

AerSale hereby requests, for the purpose of approving LOPAs for our B747-400 aircraft only, that the FAA please provide us with a limited exemption to Part 25 of the FARs as related to §25.561, §25.853 and Appendix F of Part 25 of the FARs, only with respect to the Koito seats, TSO-C39b, removed from passenger service from aircraft already owned by AerSale. The exemption would expire thirty-six months from the date granted or such lesser period of time, as specified by the proposed AD, once in effect.

Public Policy and Safety Risk:

We believe that we should be granted this limited exemption as our actions mirror the intent and spirit of the public policy set forth in the NPRM. This NPRM was enacted to ensure that the existing number of affected Koito seats in the market does not increase and that safety is assured by testing each seat through the time of the compliance period in the proposed AD. By not allowing for the installation of any additional seats and only allowing a one-for-one replacement of existing seats, the NPRM balances the interests of safety and practical compliance by allowing operators time to comply with the AD, while prohibiting the introduction of new seats on aircraft being operated through new configurations. We believe that the exemption we have requested in our unique circumstance advances the goals of the proposed AD by not introducing any new seats into commerce. If the FAA grants us this exemption and permits us to install new seats onto our aircraft, the seats we will be using in the proposed and other LOPAs will only be seats that have been removed from passenger service from aircraft owned by AerSale, and which will not be replaced with other seats subject to the NPRM. We can ensure that the aircraft from which the seats were removed will not receive new seats because the aircraft and any other aircraft from which AerSale intends to remove seats will either be disassembled or converted to cargo aircraft. Therefore, not only is AerSale creating no increase in the outstanding

number of seats in the marketplace and in service, but we will also be creating a substantive net decrease to the number of total affected seats being used in passenger service under the U.S. registry.

To illustrate this effect, as mentioned, the aircraft undergoing maintenance which we hope to reconfigure has a total of 326 Koito seats. The changes we are seeking would increase this number to 464. However, the total number of seats installed on the aircraft from which the seats came, the Boeing 747-400 bearing MSN 24427, is 384. Therefore, the net effect of AerSale being permitted to perform the reconfiguration is the removal of 246 seats from Commerce. By permitting AerSale to obtain a "new installation approval" (as it is written in the NPRM), the FAA would be introducing zero new affected seats into passenger service and would in fact be reducing the actual number of seats in existence as no seats would replace the seats removed from MSN 24427. The level of risk to the public, therefore, would not increase and would likely decrease if AerSale were to be granted the requested exemption. Additionally, as our exemption is only requested for a period of thirty-six months, the level of safety to the public would be acceptable. We base this statement on the analysis made by the FAA in allowing operators to maintain their aircraft in service for a two-to-three year period prior to the testing requirement set forth in the proposed AD, which is the same period requested in this exemption.

#### Hardship and Compliance:

AerSale is a leasing company which purchased these B747-400 aircraft from Japan Airlines International, where they were registered with the Japan Civil Aviation Bureau. Therefore, our situation is different from the operators mentioned in the NPRM and we ask for different treatment. We have no previously FAA-approved LOPAs to rely upon for our aircraft and cannot reconfigure our aircraft to meet our needs unlike operators who have multiple pre-approved LOPAs at their disposal. Therefore, in addition to the public policy reasons described above, we feel that this exemption should be granted to put our activities on par with the permitted actions that operators may take under the NPRM and proposed AD. This disparity in circumstance is creating undue hardship and preventing AerSale from leasing its fleet of B747-400 series aircraft. We currently own or are in the process of taking title to nineteen of these affected aircraft. We recognize that we must comply with the AD once it becomes effective and have already taken steps to begin testing. However, until such time as the FAA deems it necessary to require compliance with the proposed AD, we ask that we should be permitted to be able to reconfigure our aircraft to meet our needs and to not be thwarted in our efforts to take economic advantage of the aircraft we own prior to the AD becoming effective. We fully intend to test or change each seat or convert each and every aircraft we own to cargo configuration at such time.

Not only do we intend to effect compliance with the proposed AD in the future, but we have already taken steps to begin testing and we are working in concert with the FAA to review and approve the procedure and results. However, as we currently have an aircraft undergoing heavy maintenance and we wish to reconfigure our aircraft to meet the needs of future lessees, we ask that you please provide us with the limited

exemption we seek under Part 25 and the proposed AD, once in effect, and allow us to perform the requested modifications to our fleet.

### **Federal Register publication**

A summary of the petitioner's request was published for public comment in the Federal Register [75 FR 233] on December 6, 2010. No comments were received.

### **The FAA's analysis**

The FAA has reviewed the information provided by AerSale and has concluded that granting this exemption is in the public interest for the reasons discussed below.

AerSale has acquired airplanes that are equipped with seats subject to a pending AD. In this case, the AD is based on disclosures of the seat manufacturer that data they supplied to obtain Technical Standard Order authorization (TSOA) from the FAA had been falsified. Since installers typically rely on the TSOA status of seats to facilitate their installation, and since the TSOA is in question, any new installation approval would have to be qualified without taking credit for data from the existing TSOA.

In the proposed AD, the FAA has established timeframes within which to establish the compliance status of seats, and limits on the use of seats, once their compliance status is established.

Any operator that has existing approved-interior arrangements is able to configure airplanes in accordance with those approvals, until such time as limited by an AD. Because the AD is not issued yet, such operators are free to convert their arrangements with no restrictions.

In the case of AerSale, they are attempting to create another interior arrangement using seats acquired with airplanes they purchased. Because AerSale does not have their own arrangements already approved, they can either utilize the arrangements on the as-purchased airplanes, or acquire different seats for which the data are not in question. However, to use the seats that they have, and due to the suspect data, AerSale would have to generate new compliance data at considerable cost and time.

In addition, as noted by AerSale, the net effect of their modification would be to reduce the number of affected seats in service, as compared with simply operating all the airplanes with their existing arrangements. AerSale notes that they ultimately will convert the airplanes from which seats are taken to all-cargo operation after the AD becomes effective, which would further reduce the number of affected seats in service.

AerSale is requesting the same latitude that existing operators using the affected seats have in reconfiguring their airplanes to already approved arrangements, with the further commitment to test such seats in advance of the final AD compliance date.

Note that although not requested by the petitioner, compliance with certain requirements of § 25.785 also may be in question. Therefore, this exemption addresses that section as well.

Aersale has requested a 36-month exemption. The FAA-proposed AD has a 24-month compliance time to address these same issues. While the AD has not been issued, once it is issued, the ability of operators to reconfigure and install seats will likely be limited. If the

FAA grants Aersale a 36-month extension, it would be in conflict with what we have proposed for operators in general. A 24-month exemption would be consistent with what is already proposed. Should the final AD contain other provisions, those provision would supersede this exemption.

### **The FAA's Decision**

In consideration of the foregoing, I find that a grant of exemption is in the public interest, and will not adversely affect safety. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, AerSale, Inc., is hereby granted an exemption from the requirements of §§ 25.561, 25.785, and 25.853, to the extent required to permit installation and reconfiguration of Koito seats on model 747-400 airplanes. The following limitations apply to this exemption:

1. This exemption is limited to Koito Industries seats bearing Technical Standard Order markings in accordance with either TSO C39 (any amendment) or TSO C127 (any amendment), and installed on Boeing 747-400 series airplanes.
2. Any airplanes from which Koito Industries seats are removed:
  - effectively reducing the number of Koito seats in service, and which removed seats are not installed on any airplane, may be used in passenger-carrying operations using the original, remaining Koito seats, or
  - when the removed seats are installed on other airplanes that are used in passenger-carrying operations, the airplane from which seats are removed must not be used in passenger-carrying operations using any of the original, remaining Koito seats.
3. For any seats covered by this exemption that are the subject of an AD in the future, the requirements of the AD prevail.
4. This exemption expires 24 months from the date of issuance, or when Airworthiness Directive 2010-NM-156-AD is issued, whichever occurs first.

Issued in Renton, Washington, on **MAR 08 2011**



Ali Bahrami  
Manager, Transport Airplane Directorate  
Aircraft Certification Service